

LESTER J. GENDRON

IBLA 70-550

Decided July 3, 1972

Appeal from decision of Sacramento land office, Bureau of Land Management, rejecting application (S 2689) for quitclaim deed.

Affirmed.

Act of July 6, 1960 -- Conveyances: Generally -- Lieu Selections --
Statutory Construction: Legislative History

An application for a quitclaim deed under sec. 6 of the Act of April 28, 1930, 43 U.S.C. § 872, based upon a conveyance to the United States of land as a basis for lieu selection, which conveyance was made pursuant to the Act of June 4, 1897, 30 Stat. 11, 36, is properly rejected because the Act of July 6, 1960, 74 Stat. 334, precludes the Department from utilizing the 1930 Act for the purpose.

APPEARANCES: Lester J. Gendron, pro se.

OPINION BY MR. FISHMAN

Lester J. Gendron has appealed from a decision of the Sacramento land office, dated April 17, 1970, which rejected his application, filed under the Act of April 28, 1930, § 6, as amended, 43 U.S.C. § 872 (1970), 1/ for a quitclaim deed to certain lands within the Sierra National Forest, California. The area of the tract is 40 acres.

1/ This statute provides:

"Where a conveyance of land has been made or may hereafter be made to the United States in connection with an application for amendment of a patented entry or entries, for an exchange of lands, or for any other purpose, and the application in connection with which the conveyance was made is thereafter withdrawn or rejected, the Secretary of the Interior or such officer as he may designate is authorized and directed, if the deed of conveyance has been recorded, to execute a quitclaim deed of the conveyed land to the party or parties entitled thereto."

Appellant is purportedly the successor in interest of C. B. Willingham, who deeded the land to the United States in 1899 as a basis for a forest lieu selection, as was then permitted by the Forest Exchange Act of June 4, 1897 (30 Stat. 11, 36). The lieu selection made by Willingham was canceled in 1920.

The land office decision disallowed appellant's application on the ground that the Act of July 6, 1960 (74 Stat. 334), had removed the authority of the Department of the Interior to grant an application under the Act of April 28, 1930, for reconveyance of land which had been conveyed to the United States as a basis for an uncompleted forest lieu selection. The land office decision also indicated that the appellant had not demonstrated that he had acquired whatever interest C. B. Willingham had in the land in issue, although he asserts that he is "the successor in interest to the Willingham lease and . . . [has] received quitclaim deeds for them covering this property."

The Act of July 6, 1960, 74 Stat. 334, 335 precludes reconveyances of land under the Act of April 28, 1930 § 6, 43 U.S.C. § 872 (1970) to "any person who relinquished or conveyed lands to the United States as a basis for a lieu selection in accordance with . . . the Act of June 4, 1897 (30 Stat. 11, 36), as amended . . . and who has not heretofore received his lieu selection, a reconveyance of his lands, or authority to cut and remove timber. . . ."

The appellant asserts that the 1960 Act does not preclude a reconveyance under the 1930 Act because title to the base lands has already been reconveyed to C. B. Willingham. This assertion is apparently premised upon the assumption that the cancellation of Willingham's lieu selection operated to revest him with title to the base land. However, even a return of the deed and abstract would not revest the grantor with title. Masonic Homes of California, 78 I.D. 312, 316 (1971). In Frederick Siemon, 6 IBLA 156 (June 8, 1972) involving a fact situation similar to that presented in the case at bar, we held, after a review of the statutory background concerning forest lieu selections, that the Act of July 6, 1960, does remove the authority granted to the Department of the Interior by the Act of April 28, 1930, to reconvey lands which had been relinquished or conveyed to the United States as a basis for an uncompleted forest lieu selection. We find that case to be controlling on the issues at bar. Moreover, if there had been a reconveyance of the base land to Willingham, as asserted by the appellant, there would be no useful purpose served by a quitclaim deed at this time.

We find that the conveyance to the United States of the lands in issue by appellant's asserted predecessor in interest constituted the type of conveyance within the purview of the Act of July 6, 1960. That Act precludes the Department from granting to the appellant

the quitclaim deed he seeks. With respect to appellant's argument that the 1960 Act results in a taking without compensation, 2/ this Board is not the proper forum to pass upon the constitutionality of a statute enacted by Congress. Masonic Homes, supra, at 316.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed.

Frederick Fishman, Member

We concur:

Anne Poindexter Lewis, Member

Douglas E. Henriques, Member

2/ Masonic Homes, supra, at 313 and 315 shows that compensation for unexercised lieu selection rights was provided for by Congress in certain circumstances.

The Act of July 6, 1960 (74 Stat. 334) provided, in pertinent part, that upon demand made within one year from the date of enactment, payment of \$1.25 per acre, with interest, would be made for lands held by the Federal Government (which it had received under the Act of June 4, 1897, 30 Stat. 11, 36 as the basis for lieu selection, a reconveyance of his lands, or authority to cut and remove timber.

The Act of August 31, 1964, 78 Stat. 751, 43 U.S.C. § 274 (1970), note, provided in part for redemption of forest lieu selection rights, which had been properly recorded under the Act of August 5, 1955, 69 Stat. 534, 43 U.S.C. § 274 (1970), note. Under the 1964 act, holders of such scrip rights were eligible to receive \$275 per acre, 43 CFR 2612.1(e)(3) (1972).

A number of claimants did receive such compensation for forest lieu selection rights.

